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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
13

14 In the matter of the seizure of:

15 Any and all funds held in republic bank
16 of arizona accounts xxxx1889,
17 xxxx2592, xxxx1938, xxxx2912, and
18 xxxx2500
19

Case No. CV-18-06742-RGK-PJW

**OPPOSITION TO GOVERNMENT'S
MOTION FOR LEAVE TO LATE FILE
ITS OPPOSITION TO MOTION TO
VACATE OR MODIFY SEIZURE
WARRANTS**

Hon. R. Gary Klausner

Date: September 24, 2018

Time: 9:00 a.m.
20

21 Movant James Larkin is entitled to a prompt hearing on the government's massive
22 seizure of his assets, which occurred nearly six months ago. This long-awaited hearing is
23 set to occur on September 24, 2018. The government should not be permitted to file its
24 Opposition now if doing so will delay the hearing or prejudice his ability to adequately
25 respond while proceeding with the September 24, 2018 hearing.

26 **I. BACKGROUND**

27 Between March and June 2018, the government seized tens of millions of dollars-
28 worth of assets from Movants pursuant to *ex parte* civil seizure warrants issued in this

1 District. Movants' filed a Motion to Vacate or Modify the Seizure Warrants (the "Motion")
2 on August 1, 2018, raising various constitutional challenges to the warrants. *See* Dkt. 6. For
3 over six weeks, the government filed no opposition, despite requesting and receiving
4 continuances of its opposition deadline.

5 On August 14, 2018, this Court set a hearing on the matter for September 10, 2018.
6 Dkt. 17. Government counsel represented that he had a conflict with the hearing date and, at
7 his request, the parties stipulated to a continuance. Dkt. 32. The stipulation and request filed
8 by the government recommended a proposed opposition deadline of August 27, 2018. *Id.*
9 But the government did not meet that deadline. Instead, on that day, the government applied
10 for another extension of time, this time requesting an opposition deadline of September 10,
11 2018. Dkt. 40. But the government did not file its Opposition by that deadline, either.
12 Instead, on September 14, 2018, with the hearing imminent, the government filed a third
13 request for even more time to file its opposition. Dkt. 51. The government then "filed" its
14 Opposition without waiting for this Court's permission. Dkt. 53.

15 Mr. Larkin opposes the government's late filing request and urges this Court to
16 proceed with the hearing as scheduled.

17 **II. ARGUMENT**

18 The government's third request for an extension of time should be denied for at least
19 the following reasons:

20 1. It has been almost six months since the government seized Movants' assets. As
21 explained in the Motion, Mr. Larkin was entitled to a hearing *before* the government seized
22 his First Amendment protected publishing proceeds. *See* Dkt. 6. That right having already
23 been violated, Mr. Larkin is at least entitled to receive a hearing on his Motion without
24 further delay. The government's repeated failure to file a timely opposition, in total
25 disregard for its requests, stipulations, and scheduling Orders set by this Court (*see* Dkts 17,
26 42, 50), should not be rewarded or countenanced by granting this request.

27 2. The government's basis for its current request is illogical. It claims its
28 opposition is late "due to the delay in receiving this Court's Order" endorsing the

1 government's request for a September 10 opposition deadline.¹ Dkt. 51. The government
 2 fails to explain how its failure to meet its requested opposition deadline could be due to a
 3 delay in the docketing of the Court's endorsement of the government's request. The
 4 government is required to meet the deadline absent a pre-deadline ruling. As of August 27,
 5 the government should have filed its Opposition. The same goes for the September 10
 6 deadline. The government's attempt to shift the blame to the Court for its persistent failures
 7 to file a timely opposition should be rejected out of hand.

8 3. In disregard of the Court's local rules and L.R. 7-12, the government's request
 9 makes no showing of good cause, does not set forth any detailed reasons for its third
 10 requested extension, and fails to even indicate that this is its third request for an extension
 11 of time. *See* Dkt. 51.

12 In fact, there is no good cause. The government has been using its extensions of time
 13 to submit affirmative pleadings in the District of Arizona to attempt an end-run around this
 14 Court's upcoming hearing. After requesting an opposition deadline of August 27, 2018 in
 15 this Court, the government did not prepare or file any opposition but instead tried to obviate
 16 this Court's proceeding by applying for an Order in the District of Arizona on August 27,
 17 2018. *See* Dkt. 40; *see also* Dkt. 41. The government then told this Court that "[s]hould
 18 that Order issue, the government intends to move this Court to find that defendants' Motion
 19 is moot." Dkt. 40 at 2.

20 Not to be deterred, the government did the same thing just two days ago. After
 21 requesting an opposition deadline of September 10, 2018, the government did not prepare
 22 or submit any opposition before this Court but instead again went to Arizona requesting to
 23 file a Reply in support of its Application in the District of Arizona.² Movants opposed that
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25
 26 ¹ On September 7, 2018, the Court ordered the government's opposition deadline of
 September 10, 2018, but the Order was not docketed until September 12, 2018. *See* Dkt. 50.

27 ² *See* Exhibit A, *United States v. Michael Lacey, et al.*, D. AZ Docket 18-CR-0422-PHX-
 28 SPL (BSB), Motion for Leave to Late File Reply Re: Application for Order Regarding
 Criminal Forfeiture of Property in Government Custody, Doc. 303 (filed Sept. 12, 2018).

1 government request this morning.³

2 **III. CONCLUSION**

3 For all the foregoing reasons, as well as those set forth in Exhibit B, Mr. Larkin
4 respectfully requests that this Court reject the government's third request to late file its
5 Opposition. Regardless of how this Court rules, Mr. Larkin requests that the Court proceed
6 with the September 24, 2018 hearing as scheduled.

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8 Dated: September 14, 2018

Respectfully submitted,

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10 /s/ Thomas H. Bienert, Jr.

11 BIENERT, MILLER & KATZMAN, PLC
12 Attorneys for James Larkin
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28 ³ See Exhibit B, *United States v. Michael Lacey, et al.*, D. AZ Docket 18-CR-0422-PHX-SPL (BSB), Response in Opposition, Doc. 304 (filed Sept. 14, 2018).

CERTIFICATE OF SERVICE

That I am a citizen of the United States and am a resident or employed in Orange County, California; that my business address is 903 Calle Amanecer, Suite 350, San Clemente, California 92673; that I am over the age of 18 and not a party to the above-entitled action.

That I am employed by a member of the United States District Court for the Central District of California and at whose direction I caused service of: **OPPOSITION TO GOVERNMENT'S MOTION FOR LEAVE TO LATE FILE ITS OPPOSITION TO MOTION TO VACATE OR MODIFY SEIZURE WARRANTS** on the interested parties as follows:

[X] BY ELECTRONIC MAIL: by electronically filing the foregoing with the Clerk of the District Court using its ECF System pursuant to the Electronic Case Filing provision of the United States District Court General Order and the E-Government Act of 2002, which electronically notifies said parties in this case:

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I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on September 14, 2018 at San Clemente, California.

/s/ Michele Ueda /s/
Michele Ueda